

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE APRIL 4, 2006

SENATE BILL

No. 1744

Introduced by Senator Bowen

February 24, 2006

An act to amend ~~Sections 1785.11.2, 1798.29, and 1798.82~~ *Section 1785.11.2* of the Civil Code, relating to information privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1744, as amended, Bowen. Information privacy: *consumer credit reports*.

~~(1) Existing~~

Existing law regulates the activities of consumer credit reporting agencies and permits a consumer to place a security freeze on his or her consumer report. Existing law establishes procedures for temporarily lifting and for removing these security freezes.

~~(2) This~~ *On and after September 1, 2008, this* bill would revise and recast the procedures for temporarily lifting and for removing a security freeze on a consumer credit report. Among other things, the bill would require a consumer credit ~~report~~ *reporting* agency to establish an electronic contact method for taking requests from consumers to lift or remove security freezes and would require that requests that are made pursuant to this method during business hours, as defined, be effective within 15 minutes, except as specified.

~~Existing law requires any agency, or a person or business conducting business in California, which owns or licenses computerized data that includes personal information, as defined, to disclose in specified ways, any breach of the security of the data, as defined, to any California resident whose unencrypted personal~~

~~information was, or is reasonably believed to have been, acquired by an unauthorized person.~~

~~The bill would require an agency or a person or business that has suffered a breach of the security of the system to offer to pay the fees associated with placing a security freeze on consumer credit reports to each person whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The bill would require specified information to be included in the notice given to California residents pursuant to these provisions and would require a copy of these notices also be provided to the Office of Privacy Protection. The bill would also make technical changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~*no*. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1785.11.2 of the Civil Code is amended
- 2 to read:
- 3 1785.11.2. (a) A consumer may elect to place a security
- 4 freeze on his or her credit report by making a request in writing
- 5 by certified mail to a consumer credit reporting agency. "Security
- 6 freeze" means a notice placed in a consumer's credit report, at
- 7 the request of the consumer and subject to certain exceptions,
- 8 that prohibits the consumer credit reporting agency from
- 9 releasing the consumer's credit report or any information from it
- 10 without the express authorization of the consumer. If a security
- 11 freeze is in place, information from a consumer's credit report
- 12 may not be released to a third party without prior express
- 13 authorization from the consumer. This subdivision does not
- 14 prevent a consumer credit reporting agency from advising a third
- 15 party that a security freeze is in effect with respect to the
- 16 consumer's credit report.
- 17 (b) A consumer credit reporting agency shall place a security
- 18 freeze on a consumer's credit report no later than five business
- 19 days after receiving a written request from the consumer.
- 20 (c) The consumer credit reporting agency shall send a written
- 21 confirmation of the security freeze to the consumer within 10
- 22 business days and shall provide the consumer with a unique
- 23 personal identification number or password to be used by the

1 consumer when providing authorization for the release of his or
2 her credit for a specific party or period of time.

3 (d) If the consumer wishes to allow his or her credit report to
4 be accessed for a specific party or period of time while a freeze is
5 in place, he or she shall contact the consumer credit reporting
6 agency, request that the freeze be temporarily lifted, and provide
7 the following:

8 (1) Proper identification, as defined in subdivision (c) of
9 Section 1785.15.

10 (2) The unique personal identification number or password
11 provided by the credit reporting agency pursuant to subdivision
12 (c).

13 (3) The proper information regarding the third party who is to
14 receive the credit report or the time period for which the report
15 shall be available to users of the credit report.

16 (e) A consumer credit reporting agency that receives a request
17 from a consumer to temporarily lift a freeze on a credit report
18 that satisfies the requirements of subdivision (d), or a request to
19 remove a security freeze that satisfies the requirements of
20 subdivision (j), shall comply with the request as follows:

21 (1) Within three business days after the business day on which
22 the consumer's written request to lift the security freeze is
23 received at the postal address established by the consumer credit
24 reporting agency pursuant to subdivision (f).

25 (2) Within 15 minutes after the consumer's request *to*
26 *temporarily lift a security freeze for a period of time* is received
27 during normal business hours by the consumer credit reporting
28 agency through the electronic contact method or the telephone
29 number established by the consumer credit reporting agency
30 pursuant to subdivision (f). For purposes of this section, normal
31 business hours means ~~6:00 a.m. to 9:30 p.m., seven days a week~~
32 *9:00 a.m. to 5:00 p.m., Monday through Friday.*

33 (3) The failure of a consumer credit reporting agency to
34 respond within a period required by this section is not a violation
35 of this section if that failure is due to an act of God, natural
36 disaster, or other emergency or calamity, reasonable maintenance
37 of any telephone system or electronic contact method for
38 receiving communications from consumers, or the operational
39 failure of that system or method that could not have been
40 prevented or avoided by the exercise of due care or foresight.

(f) A consumer credit reporting agency shall develop procedures for receiving and processing a consumer's request to place, temporarily lift, and remove a security freeze. These methods shall include:

- (1) A postal address.
- (2) A toll-free telephone number.
- (3) An electronic contact method selected by the consumer credit reporting agency, which may include the use of fax, the Internet, or other electronic means.

(g) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

- (1) Upon consumer request, pursuant to subdivision (d) or (j).
- (2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer credit reporting agency shall remove a security freeze upon receiving a request for removal from the consumer, who provides both of the following:

- (1) Proper identification, as defined in subdivision (c) of Section 1785.15.
- (2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

1 (k) A consumer credit reporting agency shall require proper
2 identification, as defined in subdivision (c) of Section 1785.15,
3 of the person making a request to place or remove a security
4 freeze.

5 (l) The provisions of this section do not apply to the use of a
6 consumer credit report by any of the following:

7 (1) A person or entity, or a subsidiary, affiliate, or agent of
8 that person or entity, or an assignee of a financial obligation
9 owing by the consumer to that person or entity, or a prospective
10 assignee of a financial obligation owing by the consumer to that
11 person or entity in conjunction with the proposed purchase of the
12 financial obligation, with which the consumer has or had prior to
13 assignment an account or contract, including a demand deposit
14 account, or to whom the consumer issued a negotiable
15 instrument, for the purposes of reviewing the account or
16 collecting the financial obligation owing for the account,
17 contract, or negotiable instrument. For purposes of this
18 paragraph, "reviewing the account" includes activities related to
19 account maintenance, monitoring, credit line increases, and
20 account upgrades and enhancements.

21 (2) A subsidiary, affiliate, agent, assignee, or prospective
22 assignee of a person to whom access has been granted under
23 subdivision (d) of Section 1785.11.2 for purposes of facilitating
24 the extension of credit or other permissible use.

25 (3) Any state or local agency, law enforcement agency, trial
26 court, or private collection agency acting pursuant to a court
27 order, warrant, or subpoena.

28 (4) A child support agency acting pursuant to Chapter 2 of
29 Division 17 of the Family Code or Title IV-D of the Social
30 Security Act (42 U.S.C. et seq.).

31 (5) The State Department of Health Services or its agents or
32 assigns acting to investigate Medi-Cal fraud.

33 (6) The Franchise Tax Board or its agents or assigns acting to
34 investigate or collect delinquent taxes or unpaid court orders or
35 to fulfill any of its other statutory responsibilities.

36 (7) The use of credit information for the purposes of
37 prescreening as provided for by the federal Fair Credit Reporting
38 Act.

39 (8) Any person or entity administering a credit file monitoring
40 subscription service to which the consumer has subscribed.

1 (9) Any person or entity for the purpose of providing a
2 consumer with a copy of his or her credit report upon the
3 consumer's request.

4 (m) This act does not prevent a consumer credit reporting
5 agency from charging a fee of no more than ten dollars (\$10) to a
6 consumer for each freeze, removal of the freeze, or temporary lift
7 of the freeze for a period of time, or a fee of no more than twelve
8 dollars (\$12) for a temporary lift of a freeze for a specific party,
9 regarding access to a consumer credit report, except that a
10 consumer credit reporting agency may not charge a fee to a
11 victim of identity theft who has submitted a valid police report or
12 valid Department of Motor Vehicles investigative report that
13 alleges a violation of Section 530.5 of the Penal Code.

14 ~~SEC. 2. Section 1798.29 of the Civil Code, as added by~~
15 ~~Section 2 of Chapter 1054 of the Statutes of 2002, is amended to~~
16 ~~read:~~

17 ~~1798.29. (a) Any agency that owns or licenses computerized~~
18 ~~data that includes personal information shall disclose any breach~~
19 ~~of the security of the system following discovery or notification~~
20 ~~of the breach in the security of the data to any resident of~~
21 ~~California whose unencrypted personal information was, or is~~
22 ~~reasonably believed to have been, acquired by an unauthorized~~
23 ~~person. The disclosure shall be made in the most expedient time~~
24 ~~possible and without unreasonable delay, consistent with the~~
25 ~~legitimate needs of law enforcement, as provided in subdivision~~
26 ~~(e), or any measures necessary to determine the scope of the~~
27 ~~breach and restore the reasonable integrity of the data system.~~

28 ~~(b) Any agency that maintains computerized data that includes~~
29 ~~personal information that the agency does not own shall notify~~
30 ~~the owner or licensee of the information of any breach of the~~
31 ~~security of the data immediately following discovery, if the~~
32 ~~personal information was, or is reasonably believed to have been,~~
33 ~~acquired by an unauthorized person.~~

34 ~~(c) The notification required by this section may be delayed if~~
35 ~~a law enforcement agency determines that the notification will~~
36 ~~impede a criminal investigation. The notification required by this~~
37 ~~section shall be made after the law enforcement agency~~
38 ~~determines that it will not compromise the investigation.~~

1 ~~(d) A notice of a breach of the security of the system provided~~
2 ~~to any resident in California pursuant to this section shall include~~
3 ~~all of the following:~~

4 ~~(1) The date the agency provides the notice.~~

5 ~~(2) The date or dates on which the breach of the security of the~~
6 ~~system occurred according to the best information available to~~
7 ~~the agency.~~

8 ~~(3) The elements of personal information that were, or are~~
9 ~~reasonably believed to have been, acquired without authorization;~~
10 ~~provided that this does not preclude the agency from providing a~~
11 ~~uniform notice to all affected residents.~~

12 ~~(e) An agency that has provided a notice of a breach of the~~
13 ~~security of the system to any resident of California, pursuant to~~
14 ~~this section, shall offer to pay all fees associated with placing a~~
15 ~~security freeze on the resident's credit report with each of the~~
16 ~~national consumer credit reporting agencies to each resident~~
17 ~~whose personal information was, or is reasonably believed to~~
18 ~~have been, acquired by an unauthorized person. The resident~~
19 ~~shall have 60 days from the date of notification to accept the~~
20 ~~offer.~~

21 ~~(f) An agency that has provided notice of a breach of the~~
22 ~~security of the system to any resident of California, pursuant to~~
23 ~~this section, shall provide, without unreasonable delay, a copy of~~
24 ~~the notice to the Office of Privacy Protection.~~

25 ~~(g) For purposes of this section:~~

26 ~~(1) "Breach of the security of the system" means unauthorized~~
27 ~~acquisition of computerized data that compromises the security,~~
28 ~~confidentiality, or integrity of personal information maintained~~
29 ~~by the agency. Good faith acquisition of personal information by~~
30 ~~an employee or agent of the agency for the purposes of the~~
31 ~~agency is not a breach of the security of the system, provided that~~
32 ~~the personal information is not used or subject to further~~
33 ~~unauthorized disclosure.~~

34 ~~(2) (A) "Personal information" means an individual's first~~
35 ~~name or first initial and last name in combination with any one or~~
36 ~~more of the following data elements, when either the name or the~~
37 ~~data elements are not encrypted:~~

38 ~~(i) Social security number.~~

39 ~~(ii) Driver's license number or California Identification Card~~
40 ~~number.~~

~~(iii) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.~~

~~(B) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.~~

~~(h) Except as provided in subdivision (i), notice shall be provided by one of the following methods:~~

~~(1) Written notice.~~

~~(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.~~

~~(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:~~

~~(A) E-mail notice when the agency has an e-mail address for the subject persons.~~

~~(B) Conspicuous posting of the notice on the agency's Web site page, if the agency maintains one.~~

~~(C) Notification to major statewide media.~~

~~(i) Notwithstanding subdivision (h), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.~~

~~SEC. 3. Section 1798.82 of the Civil Code, as added by Section 4 of Chapter 1054 of the Statutes of 2002, is amended to read:~~

~~1798.82. (a) Any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably~~

1 believed to have been, acquired by an unauthorized person. The
2 disclosure shall be made in the most expedient time possible and
3 without unreasonable delay, consistent with the legitimate needs
4 of law enforcement, as provided in subdivision (c), or any
5 measures necessary to determine the scope of the breach and
6 restore the reasonable integrity of the data system.

7 (b) Any person or business that maintains computerized data
8 that includes personal information that the person or business
9 does not own shall notify the owner or licensee of the
10 information of any breach of the security of the data immediately
11 following discovery, if the personal information was, or is
12 reasonably believed to have been, acquired by an unauthorized
13 person.

14 (c) The notification required by this section may be delayed if
15 a law enforcement agency determines that the notification will
16 impede a criminal investigation. The notification required by this
17 section shall be made after the law enforcement agency
18 determines that it will not compromise the investigation.

19 (d) A notice of a breach of the security of the system provided
20 to any resident in California pursuant to this section shall include
21 all of the following:

22 (1) The date the person or business provides the notice.

23 (2) The date or dates on which the breach of the security of the
24 system occurred according to the best information available to
25 the person or the business.

26 (3) The elements of personal information that were, or are
27 reasonably believed to have been, acquired without authorization,
28 provided that this does not preclude the person or business from
29 providing a uniform notice to all affected residents.

30 (e) A person or business that has provided a notice of a breach
31 of the security of the system to any resident of California,
32 pursuant to this section, shall offer to pay for all fees associated
33 with placing a security freeze on the resident's credit report with
34 each of the national consumer credit reporting agencies to each
35 resident whose personal information was, or is reasonably
36 believed to have been, acquired by an unauthorized person. The
37 resident shall have 60 days from the date of notification to accept
38 the offer.

39 (f) A person or a business that has provided notice of a breach
40 of the security of the system to any resident of California,

~~pursuant to this section, shall provide, without unreasonable delay, a copy of the notice to the Office of Privacy Protection.~~

~~(g) For purposes of this section:~~

~~(1) “Breach of the security of the system” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.~~

~~(2) (A) “Personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:~~

~~(i) Social security number.~~

~~(ii) Driver’s license number or California Identification Card number.~~

~~(iii) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.~~

~~(B) “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.~~

~~(h) Except as provided in subdivision (i), notice shall be provided by one of the following methods:~~

~~(1) Written notice.~~

~~(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.~~

~~(3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:~~

~~(A) E-mail notice when the person or business has an e-mail address for the subject persons.~~

1 ~~(B) Conspicuous posting of the notice on the Web site page of~~
2 ~~the person or business, if the person or business maintains one.~~

3 ~~(C) Notification to major statewide media.~~

4 ~~(i) Notwithstanding subdivision (h), a person or business that~~
5 ~~maintains its own notification procedures as part of an~~
6 ~~information security policy for the treatment of personal~~
7 ~~information and is otherwise consistent with the timing~~
8 ~~requirements of this part, shall be deemed to be in compliance~~
9 ~~with the notification requirements of this section if the person or~~
10 ~~business notifies subject persons in accordance with its policies~~
11 ~~in the event of a breach of security of the system.~~

12 ~~SEC. 2. This act shall become operative on September 1,~~
13 ~~2008.~~